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July 18, 2016

Gregory O. Block  
Clerk, U.S. Court of Appeals for Veterans Claims  
625 Indiana Avenue, NW, Suite 900  
Washington, D.C. 20004-2950

**Re: *Southall-Norman v. McDonald*, No. 15-1357**  
**Supplemental Citation of Authority**

Dear Mr. Block:

Pursuant to Rule 30(b), U. S. Court of Appeals for Veterans Claims, appellant provides the following citation to the oral argument held in *Petitti v. McDonald*, 27 Vet.App. 415 (2007) (oral argument May 5, 2015).

At oral argument the Court asked the Secretary if 38 C.F.R. § 4.59 “appl[ie]d to diagnostic codes that have no specific requirement for limitation of motion, as well as those that do.” Oral Argument at 31:39.

The Secretary responded that he had attempted to come up with a comprehensive list of diagnostic codes where 38 C.F.R. § 4.59 would apply, but stated, “that [was] not exclusive [] we have run into cases since then where there was evidence of painful motion,” “the specific one that one of my colleagues had was a bunion hallux valgus case. That diagnostic code does not specifically mention painful motion.” Oral Argument at 34:54. He also stated, “There could be instances where painful motion could be relevant for a compensable rating based on the facts of the case if it’s not specifically listed in the diagnostic code.” Oral Argument 32:33.

In the Veteran's opening brief, she argued that remand was warranted for the Board to consider 38 C.F.R. § 4.59 in adjudicating her claim. Apa. Open. Brief at 6-10. The Veteran had painful feet and was rated at a non-compensable level during a period on appeal for her bilateral foot disability to include pes planus and hallux valgus. *See id.* The Secretary argued that remand was not warranted, as § 4.59 only applies to diagnostic codes that contain range of motion criteria, which, he contends, DC 5276 and 5280 do not have. Sec. Brief at 7-11. The Secretary argues this interpretation is entitled to deference. *See id.* The Appellant, in reply, argued that the plain language of the regulation does not indicate that § 4.59 is limited only to diagnostic codes predicated on limitation of motion. Apa. Reply Brief at 1-3.

Very truly yours,

Christian A. McTarnaghan

**VIA CM/ECF SYSTEM**